

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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In re MERRILL LYNCH & CO., INC. : **ECF CASE**  
SECURITIES, DERIVATIVE AND ERISA :  
LITIGATION : MASTER FILE NO.  
This Document relates to: : 07cv9633 (LBS) (AJP) (DFE)  
Securities Action, 07cv9633 (LBS) (AJP) (DFE) :  
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**NOTICE OF MOTION**

PLEASE TAKE NOTICE that upon the accompanying Memorandum of Law and all other pleadings and proceedings herein, Defendant Ahmass L. Fakahany, by his undersigned attorneys, will move this Court before the Honorable Leonard B. Sand, at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, Courtroom 15-A, New York, New York, 10007, at a time and date to be set by the Court, for an Order pursuant to Rules 8, 9(b) and 12(b)(6) of the Federal Rules of Civil Procedure and the Private Securities Litigation Reform Act, 15 U.S.C. § 78u-4(b)(2), dismissing the Consolidated Amended Class Action Complaint with prejudice, and granting such other relief as the Court deems proper.

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Dated: July 21, 2008  
New York, New York

Respectfully submitted,

MILBANK, TWEED, HADLEY & McCLOY LLP

By: /s/ James N. Benedict

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*Attorneys for Defendant Ahmass L. Fakahany*

**CERTIFICATE OF SERVICE**

I hereby certify that this document, filed through the ECF system, will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on July 21, 2008.

  
Andrew W. Robertson